Diana Chee Vun Hsai v Citibank Bhd

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO D10(D7)–24–511 OF 2008
MOHAMED APANDI J
30 JUNE 2009

Administrative Law — Subsidiary legislation — Legislative effect — Whether Bank Negara Guidelines on credit cards have legislative effect and force of law

Banking — Banks and banking business — Credit card — Loss of card — Unlawful and unauthorised transactions recorded — Guidelines in credit card agreement with modifications — Whether modifications reasonable — Whether bank could limit its liability

The applicant was a holder of a Mastercard credit card issued by the respondent. On 7 September 2008, the applicant realised that her credit card was missing and promptly notified the respondent of the loss on the same day and lodged a police report on the following day. The respondent informed the applicant that they were deducting a sum of RM1,859.01 being charges incurred by unauthorised use of her credit card on 6 September 2008. The applicant argued that the limit of liability for a lost credit card is RM250 as stated in the Bank Negara Guidelines BNM/RH/GL-041-01 ('the guidelines'), namely under cll 15.1, 15.2 and 15.3. The respondent however relied on the terms of the credit card agreement and claimed that the guidelines were incorporated in the said agreement with some modifications. According to the respondent, there was a duty on the cardholder to notify the loss within one hour prior to the unauthorised use and to provide proof of acting in good faith and exercising reasonable care to prevent such loss or unauthorised use of the card before the respondent could exercise its discretion to resolve the liability. The applicant therefore filed this suit claiming, inter alia, declarations that: (1) the guidelines have the force of law; and (2) the terms and conditions of respondent's credit card relied upon by the respondent to deduct a sum of RM1,859.01 from the applicant's account were contrary to the guidelines and were hence illegal, void and contrary to public policy.

Held, allowing the applicant's application:

(1) The 'one hour prior to reporting of the loss card' clause, was not only

unreasonable and ridiculous but was contrary to the provisions of cl 5.2 of the guidelines. The RM250 is the maximum liability of the cardholder in such circumstances, and the onus of proving fraud or unreasonable delay to report loss of the card is upon the issuer of the credit card (see paras 9–10).

(2) The cardholder had complied with the said terms of reporting and confirming the loss of the credit card. The respondent could not have the discretion, despite having it so written in the agreement, to circumvent the guidelines, with a view to limit its liability. The terms and conditions of the credit card agreement, as a contract, were deemed to be read, governed and construed in accordance with the Payment Systems Act 2003 ('the Act') (see paras 8(h), 9 & 13).

(3) The guidelines is a piece of subsidiary legislation, having legislative effect and force of law. The respondent had contravened the law and public policy as enunciated in the Act, which is to be read together with the guidelines (see paras 14 & 20).

[Bahasa Malaysia summary

Pemohon merupakan pemegang kad kredit Mastercard yang dikeluarkan oleh responden. Pada 7 September 2008, pemohon menyedari bahawa kad kreditnya hilang dan dengan segera memaklumkan responden mengenai kehilangan tersebut pada hari yang sama dan membuat laporan polis pada keesokan harinya. Responden memaklumkan pemohon bahawa mereka akan menolak sejumlah RM1,859.01 sebagai bayaran untuk penggunaan kad kredit tanpa kebenaran pada 6 September 2008. Pemohon mempertikaikan bahawa had liabiliti untuk kehilangan kad kredit ialah RM250 seperti yang dinyatakan dalam Panduan Bank Negara BNM/RH/GL-041-01 ('panduan'), di bawah klausa 15.1, 15.2 dan 15.3. Responden bagaimanapun bergantung kepada terma-terma perjanjian kad kredit dan menyatakan bahawa panduan tersebut telah dimasukkan dalam perjanjian tersebut dengan sedikit pengubahsuaian. Menurut responden, adalah merupakan kewajipan pemegang kad untuk memaklumkan tentang kehilangan kad dalam masa sejam sebelum penggunaan tanpa kebenaran dan memberikan bukti-bukti bahawa dia dengan suci hati dan melaksanakan kewajipan berjaga-jaga untuk mencegah kehilangan atau penggunaan tanpa kebenaran sebelum responden boleh menggunakan budi bicaranya untuk menyelesaikan liabiliti. Oleh itu pemohon memfailkan guaman ini menuntut, antara lain, deklarasi-deklarasi bahawa: (1) panduan tersebut mempunyai penguatkuasaan undang-undang; dan (2) terma-terma dan syarat-syarat kad kredit responden yang dipegang oleh responden untuk menolak sejumlah RM1,859.01 daripada akaun pemohon berlawanan dengan panduan dan oleh itu menyalahi undang-undang, tidak sah dan berlawanan dengan polisi awam.

Diputuskan, membenarkan permohonan pemohon:

(1) Klausa 'sejam sebelum melaporkan kehilangan kad', bukan sahaja tidak munasabah tetapi berlawanan dengan peruntukan klausa 5.2 panduan. RM250 merupakan liabiliti maksima buat pemegang kad dalam keadaan sebegitu, dan beban membuktikan fraud atau kelewatan tak munasabah untuk melaporkan kehilangan kad ialah pada orang yang mengeluarkan kad kredit tersebut (lihat perenggan 9–10).

(2) Pemegang kad telah mematuhi terma-terma untuk melaporkan dan mengesahkan kehilangan kad kredit. Responden tidak mempunyai budi bicara, walaupun dinyatakan secara bertulis dalam perjanjian, untuk memintas panduan, dengan harapan untuk menghadkan liabilitinya. Terma-terma dan syarat-syarat perjanjian kad kredit, sebagai satu kontrak, perlu dibaca, tertakluk dan ditafsirkan menurut Akta Sistem Pembayaran 2003 ('Akta') (lihat perenggan 8(h), 9 & 13).

(3) Panduan tersebut merupakan perundangan subsidiari dan mempunyai kuatkuasa perundangan. Responden telah melanggar undang-undang dan polisi awam seperti yang dinyatakan dalam Akta, yang perlu dibaca bersama dengan panduan (lihat perenggan 14 & 20).]

Notes

For a case on credit card, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) para 1919.

For cases on subsidiary legislation generally, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 889–892.

Cases referred to

Affin Bank Bhd v Datuk Ahmad Zahid bin Hamidi [2005] 3 MLJ 361, HC (refd)

Legislation referred to

Banking and Financial Institutions Act 1989 s 126
Interpretation Acts 1948 and 1967 s 3
Payment Systems Act 2003 ss 25, 26(1), 57, 70

Vijay Kumar (Kumar Jaspal Quah & Aishah) for the applicant.
Robin Lim (Azhar & Wong) for the respondent.

Mohamed Apandi J:

[1] This matter is an application by the applicant by way of an originating summons. By consent, the original originating summons (encl 1) was

subsequently amended. The amended originating summons is as in encl 11, where the applicant prays for:

(a) a declaration that the guidelines BNM/RH/GL-012-1 issued by Bank Negara pursuant to ss 25 and 70 of the Payment Systems Act 2003 have the force of law;

(b) a declaration that the terms and conditions of respondent's credit card relied upon by the respondent to deduct a sum of RM1,859.01 from the applicant's account are contrary to the guidelines issued by Bank Negara Malaysia pursuant to s 70 of the Payment Systems Act 2003 and are hence illegal, void and contrary to public policy;

(c) a declaration that by acting and continuing to act upon terms and conditions, imposed by the respondent, which are contrary to the guidelines, the respondents are committing an offence punishable under s 57 of the Payment Systems Act 2003;

(d) that in the absence of proving fraud on the applicant's part and/or failure to notify the respondent promptly after discovery of the applicant's loss of credit card, the respondent is not entitled to deduct any sum exceeding RM250 from the applicant's account pursuant to the Bank Negara Malaysia guidelines;

(e) that ancillary relief be granted to the applicant in that; all charges contrary to the Bank Negara Malaysia guidelines, debited to the applicant's account be reversed forthwith;

(f) cost of this action be borne by the respondent; and

(g) any other relief that this honourable court deems fit and just.

FACTS OF THE CASE

[2] The applicant, Diana Chee Vun Hsai, at all material times was a holder of a Mastercard credit card issued by the respondent, bearing No. 5160-5610-0072-2286. The applicant was also a holder of another credit card issued by HSBC Bank Bhd. On 7 September 2008, the applicant was alerted of a transaction using her credit card by HSBC Bank Bhd. Upon checking her purse, she realised that both of her credit cards were missing. She promptly notified the respondent of the loss on the same day, ie on 7 September 2008 and lodged a police report vide Dang Wangi Report No 31132/08 on the following day, 8 September 2008.

[3] On 16 September 2008 the respondent informed the applicant that they are deducting a sum of RM1859.01 being charges incurred by unauthorised used of her credit card on 6 September 2008.

[4] On 14 October 2008, in response to the respondent's letter of 16 September 2008, the applicant's solicitors wrote to the respondent and reminded them of the limit of liability for a lost credit card is RM250 as stated in Bank Negara Guidelines BNM/RH/GL-041-01, namely under cll 15.1, 15.2 and 15.3.

[5] The solicitors for the respondent replied that they are relying on the terms of the credit card agreement and in a letter dated 11 December 2008 stated their stand as follows:

> With regard to the particular items as referred by your client in the Bank Negara Guidelines, please take note that our client did not disregard these guidelines but have incorporated in the said Agreement with some modifications. Our client imposes a duty on the cardholder to notify the loss one (1) hour prior to the unauthorized use and to provide proof of acting in good faith and exercising reasonable care and diligence to prevent such loss or theft or unauthorised use of the card before our client can exercise its discretion whether to resolve the liability or not. Such a clause is not in contravention of the Bank Negara Guidelines.

[6] In view of the respondent's adamant stand, the applicant filed this originating summons in court.

APPLYING THE FACTS TO THE LAW

[7] The relevant substantive law pertaining to this originating summons is the Payment Systems Act 2003 (Act 627) which came into force on 1 November 2003, vide notification, PU(B) 308/2003.

[8] Upon perusal of the cause papers and the submissions filed herein, I make the following findings:

(a) the respondent, Citibank Bhd, is an operator or issuer of a designated payment system under the Payment Systems Act 2003;

(b) as can be found in the preamble of the Act, the Central Bank of Malaysia also known as Bank Negara Malaysia, is 'the authority responsible for promoting the reliable, efficient and smooth operation of the national payment and settlement systems and for ensuring that the national payment and settlement systems policy is directed to the advantage of Malaysia';

(c) flowing from that authority and duty, the Bank Negara Malaysia is the approving authority to approve any person to issue a designated payment instrument (refer to s 25 of the Act);

(d) as the approving authority, the Bank Negara Malaysia is given the powers to revoke any such approval. This is provided for by s 26(1) which reads as follows:

Revocation of approval 26

(1) The Bank may revoke an approval granted under paragraph 25(1)(c) if it appears to the Bank that —

(a) the issuer has contravened or is contravening any of the provisions of this Act;

(b) the issuer has contravened any restrictions, limitations or conditions of the approval;

(c) the issuer has failed to comply with any guidelines, circulars, standards or notices issued by the Bank under Section 70;

(d) the issuer has made a false or an incorrect statement in the documents or information submitted under paragraph 25(1)(a) or particulars of any change to documents and information submitted under subsection 29(1);

(e) the issuer has ceased issuing the designated payment instruments for any continuous period of six months; or

(f) the issuer goes into liquidation or is wound up or is otherwise dissolved.

(e) this brings to focus the position of the guidelines by Bank Negara. The Bank Negara is empowered to issue the 'guidelines' under the enabling provision of s 70 of the Act which reads as follows:

Power to issue guidelines, etc

70 The Bank may, generally in respect of this Act, or in respect of any particular provision of this Act, or generally in respect of the conduct of all or any of the operators of payment systems or issuers of payment instruments, issue such guidelines, circulars, standards or notices as the Bank may consider desirable.

(f) the guidelines that is the subject matter of this proceedings is known and identified as BNM/RH/GL-014-01. In order to appreciate the law and the issues in relation to this application, it is pertinent to reproduce the said guidelines in toto, which reads as follows:

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PART A OVERVIEW

1. INTRODUCTION

1.1 The Credit Card Guidelines set out the minimum requirements on credit card operations which all issuers of credit cards in Malaysia are required to observe to ensure prudent lending practices through their credit card businesses. The issuers are encouraged to adopt more stringent measures in addition to the minimum requirements contained in these guidelines.

1.2 The Guidelines supersede all previous circulars on credit card operations as listed in **Appendix 1**.

1.3 The Guidelines came into force in June 2004.

2. APPLICABILITY

2.1 The Guidelines are applicable to all credit card issuers in Malaysia including licensed institutions.

2.2 **Part D** of these Guidelines is applicable only to issuers of credit cards which are licensed institutions.

3. INTERPRETATION

3.1 In these Guidelines, unless the context otherwise requires:

3.1.1 Credit card — means a payment instrument which indicates a line of credit or financing granted by the issuer to the user and where any amount of the credit utilised by the user has not been settled in full on or before a specified date the unsettled amount may be

subject to interest, profit or other charges.

3.1.2 Issuer of credit cards means:

a. A licensed institution which issues credit cards; or

b. A person who has obtained Bank Negara Malaysia's approval to issue credit cards under Subsection 25(1) of the Payment Systems Act 2003; and

i. the line of credit is provided by a licensed institution; or

ii. has its own line of credit; or

iii. the issuance of the credit card is carried out through a joint venture arrangement with a licensed institution, hereinafter referred to as "non-financial institution".

3.1.3 Licensed institution for the purpose of these guidelines means any person licensed under Subsection 6(4) of the Banking and Financial Institutions Act 1989 (BAFIA) to carry on banking business, banking and finance company business, finance company and merchant banking business.

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PART B LEGAL PROVISIONS

4. LEGAL PROVISIONS

4.1 The Guidelines are issued pursuant to Sections 25 and 70 of the Payment Systems Act 2003. Any person who fails to comply with the Guidelines may be guilty of an offence punishable under Section 57 of the Payment Systems Act 2003.

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PART C POLICY REQUIREMENTS

5. MINIMUM AGE AND INCOME REQUIREMENTS

5.1 An issuer of credit cards shall only issue credit cards to an applicant, as a principal cardholder, who is at least 21 years old and earning a minimum income of RM18,000 per annum[1].

6. PLACEMENT OF FIXED DEPOSIT

6.1 For an applicant who meets the minimum age requirement under **paragraph 5.1** but is unable to prove his annual income, the issuer of credit cards shall require the applicant to place a fixed deposit of an amount equivalent to the approved credit limit to be granted to such applicant[2].

6.2 An issuer of credit cards which is a non-licensed institution shall ensure that the applicant referred to in paragraph 6.1 place the fixed deposit with the licensed institution that is providing the line of credit or that is the joint venture partner of the issuer, as the case may be.

7. PRUDENT LENDING

7.1 An issuer of credit cards shall have an internal credit assessment policy for purposes of conducting a proper credit scoring exercise in approving or declining credit card applications and in determining an appropriate credit limit for each approved individual applicant.

7.2 An issuer of credit cards that is authorised to access the Central Credit Reference Information System (CCRIS) shall utilise the CCRIS and other sources of credit information for the purpose of verifying the

[1] Such requirements were previously stated in the circulars dated 24 December 1991 and 28 July 1999 listed in Appendix 1.
[2] Such requirement was previously stated in the circular dated 21 January 1995 listed in Appendix 1.

applicant's credit worthiness to facilitate the credit assessment process.

7.3 An issuer of credit cards that is not authorised to access the CCRIS may, in addition to its internal credit assessment policy, rely on the licensed institution which is providing the line of credit or which is the joint venture partner of the issuer, as the case may be, for the purpose of verifying the applicant's credit worthiness to facilitate the credit assessment process.

8. TERMS AND CONDITIONS

8.1 An issuer of credit cards shall specify in the terms and conditions the significant liabilities and obligations applicable to the principal and supplementary cardholders in **bold print** in its application brochures and web pages. Such terms and conditions should be described in plain language, which is easily understood by the applicants.

8.2 An issuer of credit cards shall ensure that its customer service staff are able to answer queries on the credit card terms and conditions. The hotlines for the customer service shall be published in the brochures, monthly billing statements and web pages.

9. USAGE OF CREDIT CARD FOR UNLAWFUL ACTIVITIES

9.1 An issuer of credit cards shall include in the terms and conditions under **paragraph 8.1** a term specifying that the credit cards are not to be used for any unlawful activities such as illegal online betting. An issuer of credit cards shall immediately terminate the credit card facility if the cardholder is found to have used the credit card for an unlawful activity.

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10. MINIMUM MONTHLY REPAYMENT

10.1 An issuer of credit cards shall require their cardholders to make a minimum monthly repayment amount of 5% of the total outstanding balance[3].

11. STATEMENT ON MINIMUM MONTHLY REPAYMENT

11.1 An issuer of credit cards shall provide a statement, in the form as set out in **Appendix 2,** on the **front page** of the monthly billing statement advising the cardholder on the consequences of paying only the minimum monthly repayment amount each month.

11.2 An issuer of credit cards shall provide the statement under paragraph 11.1 in Bahasa Malaysia if the monthly billing statement is published in a single language and in both Bahasa Malaysia and English if such statement is published in two languages.

12. FEES AND CHARGES

12.1 An issuer of credit cards, in imposing late payment charges and finance charges on their cardholders is subject to the following:

a. A late payment charge may be imposed up to a maximum of 1% of the monthly repayment amount due or RM5, whichever is higher, if the cardholder fails to make the minimum monthly repayment by the due date[4]; and

b. A finance charge may be imposed up to a maximum of 1.5% per month which is equivalent to 18% per annum of the total outstanding balance[5].

12.2 All retail transactions (as opposed to cash advance transactions) charged to a credit card shall be allowed an interest free period of at

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[3] Such requirement was previously stated in the circulars dated 24 December 1991, 7 November 1995, 2 January 1996, 11 September 1998 and 20 November 1998 listed in Appendix 1.
[4] Such requirement was previously stated in the circular dated 30 December 1998 listed in Appendix 1.
[5] Such requirement was previously stated in the circular dated 30 December 1998 listed in Appendix 1.

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least 20 days from the posting date of such transaction, regardless of the total outstanding balance in the credit card account. In this regard, the finance charge (interest) shall only be charged on the balance that remains outstanding in the account from the preceding monthly billing statement date, which shall be calculated on a daily basis. In other words, all retail transactions posted to the account after the previous statement date shall not be included in the total outstanding balance for the purpose of computing the finance charges. Finance charges shall not be clawed back to the date when the transaction has been posted to the cardholder's account and shall only be computed commencing from the due date following the interest free period[6].

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13. MINIMUM DISCLOSURE ON FEES AND CHARGES

13.1 An issuer of credit cards shall specify the credit card fees and charges in a manner that can be easily understood by the applicant, using concise language and in a standard table as provided in **Appendix 3**.

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13.2 An issuer of credit cards shall ensure that the Fees and Charges Table is displayed prominently on the credit card application forms including electronic application forms, preferably on the same page of such forms. If otherwise, a conspicuous reference to the disclosure shall be indicated in the application forms. In the case of electronic application forms, the issuer of credit cards shall ensure that the Fees and Charges Table is brought to the notice of the applicant in such manner that the applicant cannot bypass such Fees and Charges Table before the applicant submits his credit card application.

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13.3 An issuer of credit cards shall print on the **front page** of the monthly billing statement to cardholders, information on the various charges (including finance charges) imposed on the outstanding balances and the method of computation of such charges. Where there are space

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[6] Such requirement was previously stated in the circular dated 7 November 1995 listed in Appendix 1.

constraints, an issuer of credit cards shall disclose the information prominently at the back of the monthly billing statement and a conspicuous reference to the disclosure shall be indicated on the front page of the monthly billing statement. The effective interest rate charged on credit card accounts shall be printed on the basis of 'per annum'. The issuer of credit cards is allowed to also print the interest rate on a daily or monthly basis in addition to the 'per annum' basis[7].

14. SUPPLEMENTARY CARDHOLDER'S LIABILITY

14.1 An issuer of credit cards shall not hold the supplementary cardholder jointly or severally liable for the debts of the principal cardholder or other supplementary cardholders.

15. LIABILITY FOR LOST OR STOLEN CREDIT CARDS

15.1 An issuer of credit cards shall provide effective and convenient means by which a cardholder can notify any lost, stolen or unauthorised use of his credit card and shall provide procedures for acknowledging receipt and verification of the notification for the lost, stolen or unauthorised use of credit card.

15.2 The cardholder's maximum liability for unauthorised transactions as a consequence of a lost or stolen credit card shall be confined to a limit specified by the issuer of credit cards, which shall **not exceed RM250,** provided the cardholder has not acted fraudulently or has not failed to inform the issuer of credit cards as soon as reasonably practicable after having found that his credit card is lost or stolen.

15.3 Where the amount imposed on the cardholder for unauthorised transactions due to lost or stolen credit cards is in excess of the maximum liability limit, the issuer of credit cards has to prove that the

[7] Such requirements were previously stated in the circulars dated 7 November 1995 and 2 January 1996 listed in Appendix 1.

cardholder has acted fraudulently or failed to inform the issuer of credit cards as soon as reasonably practicable after having found that his credit card is lost or stolen.

15.4 An issuer of credit cards shall ensure that the cardholder shall not be held liable for any unauthorised transaction charged to the credit cards after the cardholder has notified the issuer of credit cards verbally or in writing, that his credit cards are lost or stolen. An issuer of credit cards shall take immediate action upon notification by the cardholder, to prevent further use of the lost or stolen credit card.

15.5 An issuer of credit cards shall notify the cardholder in the monthly billing statements of the cardholder's potential liability for unauthorised transactions if he has acted fraudulently or has failed to inform the issuer of credit cards as soon as reasonably practicable upon discovery that his credit card has been lost or stolen.

16. CONSUMER AWARENESS AND EDUCATION PROGRAMME

16.1 An issuer of credit cards shall conduct a consumer awareness and education programme on a continuing basis which shall include:

a. Advice on "comparison shopping" for credit cards;
b. Advice on prudent use of credit cards;
c. Consequences of paying only the minimum monthly repayment amount;
d. Advice on fraud prevention measures; and
e. Potential liability for lost or stolen credit cards.

17. SUSPENSION OF INTEREST ON NON-PERFORMING CREDIT CARD LOANS AND PROVISION FOR BAD AND DOUBTFUL DEBTS

17.1 An issuer of credit cards which is a licensed institution shall comply with the "Guidelines on the Suspension of Interest on Non-Performing Loans and Provision for Bad and Doubtful Debts" issued by Bank Negara Malaysia, which may be revised from time to time.

17.2 An issuer of credit cards which is a non-licensed institution shall ensure that the suspension of interest on non-performing credit card loans and provision for bad and doubtful debts comply with the requirements as specified in **Appendix 4**.

18. ISSUANCE OF CREDIT CARDS TO DIRECTORS

18.1 Pursuant to Subsection 62(1) of the BAFIA, exemption is given to licensed institutions to issue credit cards to their directors, provided that the licensed institutions ensure that the credit card shall be utilised as a charge card [8].

18.2 An issuer of credit cards which is a non-licensed institution shall ensure that the credit cards issued to their directors shall be utilised as a charge card.

18.3 An issuer of credit cards shall ensure that all transactions charged to the credit cards issued under paragraph 18.1 and 18.2 above are settled by the cardholders before or on the payment due date and the cardholders are not allowed to have any outstanding balances in their credit card accounts after the payment due date.

[8] Such requirement was previously stated in the circular dated 18 July 1996 listed in Appendix 1.

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PART D APPOINTMENT OF DEBT COLLECTION AGENCIES

19. APPOINTMENT OF DEBT COLLECTION AGENCIES

19.1 An issuer of credit cards which is a licensed institution may outsource the debt collection functions with regard to its **credit card receivables** in accordance with the circulars entitled 'Appointment of Debt Collection Agencies by Banking Institutions' dated 22 May 2000 and 'Outsourcing of Banking Operations' dated 14 April 2000 issued by Bank Negara Malaysia, which may be revised from time to time.

PART E APPENDICES

Appendix 1

Appendix 1 – Revoked/Superseded Circulars

NO.	CIRCULAR	ISSUE DATE
1	Guidelines on Credit Card Operations	24 December 1991
2	Credit Card with Line-of-Credit to Fixed Depositors (Ref: 2201/808/26/3/HY/SAH/MAH)	21 January 1995
3	Guidelines on Credit Card Operations (Ref: 2201/808/26/3/HY/SAH/MAH)	7 November 1995
4	Guidelines on Credit Card Operations (Ref: 2201/808/26/3/HY/SAH/MAH)	2 January 1996
5	Issuance of Credit Cards to Directors (Ref: 2201/808/26/3/RMI/SAH)	18 July 1996
6	Bayaran Minimum Bulanan Bagi Kad Kredit (Ref: JSP/POL/4110/CF/JM)	11 September 1998
7	Bayaran Minimum Bulanan Bagi Kad Kredit	20 November 1998
8	Garispanduan Mengenai Operasi Kad Kredit	30 December 1998
9	Minimum Income for Credit Cards (Ref: JSP/POL/4109/5)	28 July 1999
10	Credit Card Guideline (version 1.0)	18 March 2003
11	Credit Card Guideline (version 1.1)	10 October 2003

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Appendix 2

Appendix 2 – Statement on Minimum Monthly Repayment

Notis Jika Hanya Membayar Bayaran Minimum Bulanan:

Jumlah faedah yang harus dibayar dan tempoh yang diambil untuk menjelaskan keseluruhan baki belum jelas anda akan bertambah jika anda hanya membayar bayaran minimum bulanan. Berikut adalah gambaran jumlah faedah yang dikenakan dan tempoh pembayaran balik, bagi senario-senario baki belum jelas yang berbeza jika anda hanya membayar bayaran minimum secara berterusan. Pengiraan adalah berdasarkan 5% bayaran minimum atau RM__, yang mana lebih tinggi, pada caj kewangan sebanyak __*% setahun.*

Notice on Paying Only Minimum Monthly Repayment:
The amount of interest you have to pay and the time it takes to repay your balance in full will increase if only the minimum monthly payment is made. The following table illustrates the amount of interest incurred and the repayment period, under different outstanding amount scenarios if you continue to pay only the minimum amount. The computations are based on 5% minimum payment or RM__*, whichever is higher, at a finance charge of __* % p.a.

	Contoh bagi senario-senario baki belum jelas yang berbeza/ **Examples under different outstanding amount scenarios**					
Baki belum jelas/ *Outstanding balance* (RM)	500	1,000	1,500	2,000	5,000	10,000
Tempoh pembayaran balik/ *Repayment period* (bulan/ *months*)	*	*	*	*	*	*
Jumlah faedah yang dikenakan/ *Total interest incurred* (RM)	*	*	*	*	*	*

Note: * Figures to be provided by the issuer of credit cards, based on their rates and charges.

Where there are space constraints, an issuer of credit cards is allowed to disclose part of the statement on the front page of the monthly billing statement, and to disclose the remainder of the statement at the back of the monthly billing statement with a clear reference made to it, as follows:

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Front Page of Monthly Billing Statements

Notis Jika Hanya Membayar Bayaran Minimum Bulanan:
Jumlah faedah yang harus dibayar dan tempoh yang diambil untuk menjelaskan keseluruhan baki belum jelas anda akan bertambah jika anda hanya membayar bayaran minimum bulanan. Sila rujuk kepada perkara ___ di muka surat belakang untuk maklumat lanjut.

Notice on Paying Only Minimum Monthly Repayment:
The amount of interest you have to pay and the time it takes to repay your balance in full will increase if only the minimum monthly payment is made. Please refer to item___at the back page for details.

Back Page of Monthly Billing Statement

Notis Jika Hanya Membayar Bayaran Minimum Bulanan:
Berikut adalah gambaran jumlah faedah yang dikenakan dan tempoh pembayaran balik, bagi senario-senario baki belum jelas yang berbeza jika anda hanya membayar bayaran minimum secara berterusan. Pengiraan adalah berdasarkan 5% bayaran minimum atau RM__, yang mana lebih tinggi, pada caj kewangan sebanyak __*% setahun.*

Notice on Paying Only Minimum Monthly Repayment:
The following table illustrates the amount of interest incurred and the repayment period, under different outstanding amount scenarios if you continue to pay only the minimum amount. The computations are based on 5% minimum payment or RM__*, whichever is higher, at a finance charge of __* % p.a.

	Contoh bagi senario-senario baki belum jelas yang berbeza/ **Examples under different outstanding amount scenarios**					
Baki belum jelas/ *Outstanding balance* (RM)	500	1,000	1,500	2,000	5,000	10,000
Tempoh pembayaran balik/ *Repayment period* (bulan/ *months*)	*	*	*	*	*	*
Jumlah faedah yang dikenakan/ *Total interest incurred* (RM)	*	*	*	*	*	*

Note: * Figures to be provided by the issuers of credit cards, based on their rates and charges.

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Appendix 3

APPENDIX 3 – Fees and Charges Table

An issuer of credit cards shall adopt the following Fees and Charges Table which shall be printed using a minimum of 8-font size (the table is shown in an 8-font size):

Fees and charges*	
a) Annual fee: **i) Principal** **ii) Supplementary**	*The annual fees are:* Visa (RM) / MasterCard (RM) / Others (RM) — Principal / Suppl. Card Type: Classic/Standard; Gold; Platinum/Premier
b) Joining fee	The fees are : i) Supplementary RM___ iii) Gold RM___ ii) Classic/Standard RM___ iv) Platinum/Premier RM___
c) Finance charges: **i) Purchases** **ii) Cash advance** **iii) Balance transfer**	The charges are : i) __% p.a. of the outstanding amount calculated on a daily basis. ii) __% p.a. of the cash advance amount calculated on a daily basis. iii) __% p.a. of the amount transferred calculated on a daily basis.
d) Cash advance fees	advance fee is __% of the amount advanced or a minimum of RM__, whichever is higher. This is imposed for each cash advance transaction.
e) Minimum monthly repayment	5% of the outstanding balance or a minimum of RM__.
f) Late payment charge	The late payment charge is __% of the minimum repayment amount due or a minimum of RM5, whichever is higher. *[To include other related charges, if any]*
g) Interest free period	__ days from the date of the monthly billing statement and only applicable for purchase transactions.
h) Conversion for overseas transactions	The conversion rate as determined by Visa International or MasterCard International plus administration cost of ___%.
Note : For promotional offers, an issuer of credit cards is required to mention the duration of the promotion period, that is start and end date, and the conditions that apply, if any.	

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Appendix 4

Appendix 4 – Suspension of Interest on Non-Performing Credit Card Loans and Provision for Bad and Doubtful Debts

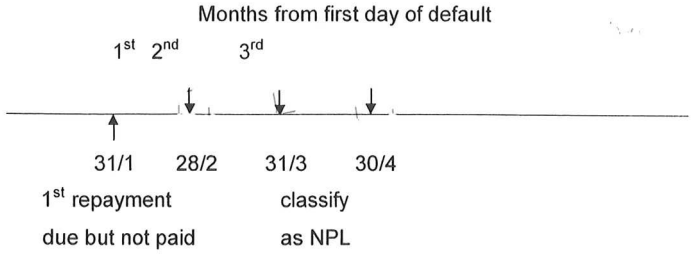
Introduction

1. The objective of the requirement is to establish minimum standards on the classification of non-performing credit card loans and provision for bad and doubtful debts, income recognition and loss provisioning by issuers of credit cards which are non-licensed institutions so that there is a realistic valuation of loan assets and prudent recognition of income.

Classification of Non-Performing Credit Card Loans

Classification of credit card accounts as non-performing credit card loans

2. A credit card account is classified as a non-performing loan when the cardholder fails to settle his minimum monthly repayments for 3 months or more from the first day of default. This is illustrated as follows:



Treatment of partial repayments of credit card loans

3. For purposes of ascertaining the period in arrears, each minimum monthly repayment must be made in full. If the cardholder settles his minimum monthly repayment partially, the repayment is still deemed to be in arrears.

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Treatment of interest and penalty interest on non-performing credit card loans

4. All interest accrued from the date the credit card account is classified as non-performing shall forthwith be suspended and credited into the "interest-in-suspense" account. Interest suspended should be credited to the "interest-in-suspense" account and reflected in the accounts of the issuer of credit cards. Memorandum entry is permitted only when the credit card account has been fully or partially written-off.

5. An issuer of credit cards is required to claw-back interest to the first day of default. In this regard, interest accrued and recognised as income prior to the date the credit card account is classified as non-performing must be reversed out of income. Suspension of interest on a non-performing credit card account will commence from the date the credit card account is classified as non-performing. Subsequently, interest earned on a non-performing credit card account will be recognised as income on a cash basis that is only when the interest is received by the issuer of credit cards.

6. Penalty interest should be treated in the same manner as normal interest. Similarly, penalty interest should be recorded in the books of credit card accounts and not maintained as a memorandum entry.

Reclassification of non-performing credit card loans as performing

7. A non-performing credit card loan can be reclassified as performing once total instalment in arrears falls below 3 months. For example, if a credit card loan is 4 months in arrears and the cardholder pays 2 monthly instalments, the non-performing credit card loan can be reclassified as performing as the total period in arrears is below 3 months. When the credit card loan is reclassified as performing, interest can be recognised as income on an accrual basis. If the loan

remains at all times below 3 months in arrears, the loan can be classified as performing and interest income can be recognised or accrued accordingly.

Provisions for Bad and Doubtful Debts

8. An issuer of credit cards is required to review the adequacy of the general and specific provisions for bad and doubtful debts at all times to ensure that the provisions set aside are reflective of their potential losses.

9. In respect of specific provisions, an issuer of credit cards is required to observe the following minimum parameters:

Period of Default	Classification	Minimum specific provision over the amount outstanding, net of unearned interest and interest suspended
3 months but less than 6 months	Doubtful	50% provisioning
6 months and above	Bad	100% provisioning

10. Notwithstanding the above, an issuer of credit cards should be further guided by the general principles enumerated below for purposes of determining the level of provisioning required:

(i) **Doubtful accounts**

Credit facilities or a portion thereof where collection in full is **improbable** and there is a high risk of **ultimate default.**

(ii) **Bad accounts**

Credit facilities or a portion thereof which are deemed **uncollectible and worthless,** on the basis of relevant circumstances.

Other issues

Issuing of new credit cards for a non-performing credit card account

11. Where an issuer of credit cards issues a credit card and the account of the credit card subsequently is classified non-performing, the same issuer of credit cards or other institutions in the same group, as the case may be, is not allowed to issue a new credit card to the defaulting cardholder to settle the arrears.

Write-off on non-performing credit card loans

12. Credit card accounts or portions thereof which are classified as bad or deemed uncollectible and worthless should be written-off. To ensure that the health of the issuer of credit cards is not distorted by writing-off the credit card accounts which are deemed still collectible as a guise to suppress the true level of non-performing credit card loans and interest-in-suspense, it shall be the management's responsibility to ensure that prudent and proper monitoring of credit card accounts is enforced.

13. Before a credit card account can be written-off, the issuer of credit cards should seek the approval of the Board of Directors or the management committee, as the case may be.

A

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Write-back of specific provision

B

14. Write-back of specific provision is permitted under the following circumstances:-

(i) where the credit card account has been fully settled;

(ii) where there is cash inflow; or

C

(iii) where there is concrete evidence to support a reclassification of the credit card account to a better category.

Minimum requirement

D

15. Issuers of credit cards may adopt more stringent measures in addition to the minimum requirements mentioned in **Appendix 4**.

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(g) the relevant clause in the Guidelines is obviously cl 15 under the heading:

> 15. LIABILITY FOR LOST OR STOLEN CREDIT CARD;
>
> and in particular clause 15.2 which read as follows:
>
> 15.2 The cardholder's maximum liability for unauthorized transactions as a consequence of a lost or stolen credit card shall be confined to a limit specified by the issuer of credit cards, which shall not exceed RM250, provided the cardholder has not acted fraudulently or has not failed to inform the issuer of credit card as soon as reasonably practicable after having found that his credit card is lost or stolen.

(h) on the evidence adduced, there is not an iota of evidence to indicate that the applicant, Diana Chee Vun Hsai, who had lost her credit card has acted fraudulently or has failed to inform the respondent, as the issuer of the credit card as soon as reasonable practicable. This can be seen in her police report that was made one day after discovering that her credit cards was stolen.

[9] The respondent contended that the applicant can still be charged for any transaction after the credit card has gone missing because under the terms and conditions of the credit card, it was stated that the limit of liability of RM250 is only for any transaction effected for a period of one hour prior to the reporting of the loss of the card. This 'one hour prior to reporting of the loss card' clause, to my mind is not only unreasonable and ridiculous but it is contrary to the provisions of cl 15.2 of the Bank Negara Guidelines.

[10] In fact, the RM250 is the maximum liability of the cardholder in such circumstances, and that the onus of proving fraud or unreasonable delay to report loss of the card is upon the issuer of the credit card.

[11] Furthermore, the limit of 'transactions effected for a period of one hour prior to the reporting of the loss' is clearly at tangent and in paradox to another term of the agreement which stipulates that the cardholder is to report any loss of the card immediately and to be followed by a written confirmation to the respondent, no later than seven days of the occurrence of the event.

[12] The cardholder has complied with the said terms of reporting and confirming the loss of the credit card. The respondent cannot have the discretion, despite having it so written in the agreement, to circumvent the Bank Negara Guidelines, with a view to limit its liability.

[13] It must be reminded that the terms and conditions of the credit card agreement, as a contract, are deemed to be read, governed and construed in accordance with laws of Malaysia, and in this case, the Payment Systems Act 2003.

THE GUIDELINES HAS FORCE OF LAW

[14] The Bank Negara Credit Card Guidelines BNM/RH/GL 1014-1, as stated earlier was issued under the enabling provision of s 70 of the Payment Systems Act 2003. I am of the opinion that the said guidelines is a piece of subsidiary legislation. 'Subsidiary Legislation' is defined under s 3 of the Interpretation Acts 1948 and 1967 as:

> Any proclamation by law, rule, regulation, order, notification, by law *or other instrument* made under any Act, Enactment, Ordinance or other lawful authority and having legislative effect.

[15] The Bank Negara Guidelines comes under the category of 'other instrument' and is therefore a subsidiary legislation, having legislative effect and force of law. To quote Shakespeare in *Romeo and Juliet*, Juliet said, 'what's in a name? That which we call a rose by any other name, would smell just as sweet'.

[16] A fortiori, in the guidelines itself, it is specially stated in cl 4.1 that 'Any person who fails to comply with the Guidelines may be guilty of an offence punishable under section 57 of the Payment Systems Act 2003'. Section 57 of the Act reads as follows:

> General Penalty
>
> 57 Any person who fails to comply with or contravenes any requirement or prohibition imposed upon him by any provisions of this Act or any specification or requirement made, or any order, directive or notice given, or any limit, term, condition or restriction imposed in the exercised in the exercise of any power conferred under, pursuant to, or by virtue of any of the provisions of this Act not specified in the Schedule, commits an offence under such provision, and if no penalty is expressly provided for the offence in this Act, shall on conviction be liable to a fine not exceeding five hundred thousand ringgit, and in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding one thousand ringgit for every day during which the offence continues.

[17] In addition to that penalty, the issuer of the credit card is also liable to have its approval revoked by Bank Negara if the issuer has failed to comply

with any of the guidelines issued by Bank Negara. This, as explained earlier, is provided for under s 26(1) of the Payment Systems Act 2003.

[18] The above said penal provisions against the issuer of the credit card further fortified the position of the Bank Negara Guidelines as having the force of law.

[19] It is worthy to note that, the learned judge in the case of *Affin Bank Bhd v Datuk Ahmad Zahid bin Hamidi* [2005] 3 MLJ 361 at p 372 also concluded that the Bank Negara Malaysia Guidelines issued pursuant to s 126 of the Banking and Financial Institutions Act 1989 (BAFIA) do have the force of law.

CONCLUSION

[20] Applying the law to the facts of the case, I conclude that the respondent has contravened the law and public policy as enunciated in the Payment Systems Act 2003, which is to be read together with the Bank Negara Credit Card Guidelines. Wherefore, I have no hesitation to allow and grant order in terms of the application in this originating summons as per encl 11.

Applicant's application allowed.

Reported by Kanesh Sundrum